

REMARKS/ARGUMENTS

Claims 1-18 were originally filed in this application. In this amendment, Claims 1-3, 7, 8, 10-13, 15, and 17-18 have been amended; and Claims 4-6, 9 have been canceled. Claims 14 and 16 remain unchanged. In accordance with the new rules, all the claims are shown above, and the amended claims are shown in a redlined format. The amendment to the specification is made by replacing the paragraph with the paragraph set forth above. As set forth below, the amendments to the Claims are believed to place the Claims in condition for allowance. In view of the amendments, as discussed below, reconsideration of the Application and issuance of a Notice of Allowability are respectfully requested.

Initially, amendments to the specification have been made to correct typographical errors. These amendments to the specification do not add new matter to the application.

The Examiner rejected Claims 1-18 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter Applicant regards as the invention. Applicant's undersigned attorney has reviewed the claims and amended them to bring them into compliance with §112. Hence, as written, Claims 1-18 all are believed to comply with the requirements of §112.

The Examiner asserted that *Bifido* is a lactic acid bacteria, and stated that Claims 11 and 15 are not clear. Applicant respectfully points out the Claims 11 and

15 provide that the culture contains "*Bifido* bacteria and lactic acid **producing** bacteria" not , "*Bifido* bacteria and lactic acid bacteria" as stated by the Examiner. Applicant respectfully asserts that Claims 11 and 15 are clear as originally submitted.

The Examiner asserted that the percentage range set forth in Claim 15 is not necessarily equivalent to the percentage range set forth in claims 4 or 17. Applicant has amended the claims such that the recitation of percentages is equivalent in all three claims. As now written, the subject matter of Claim 4 (which has been incorporated into Claim 1) provides that the milk protein concentrate has a protein content of about 65% to about 90%; Claim 15 has been amended to remove the reference to the percentage of milk protein concentrate; and Claim 17 has been amended to provide that the probiotic milk protein concentrate is about 65% to about 90% milk protein concentrate. The percentage ranges of Claims 4 and 17 are both supported by the specification. With respect to the milk concentrate being about 65-90% protein, see page 11, lines 4-11 of the specification; and with respect to the milk protein concentrate comprising about 65-90% of the probiotic concentrate, see the example set forth at page 10 of the specification.

Claim 17 has been amended to make clear that the percentages of the various ingredients are all by weight of the probiotic milk protein concentrate (or mixture or combination). Applicant believes claim 17 to be clear that the 100,000 to 50,000,000 organisms count to include all the organisms, that is the combined

number of organisms from A, B, and C of claim 17 amount to 100,000 to 50,000,000 organisms.

The Examiner rejected Claims 1-18 under 35 U.S.C. §102 as being anticipated by, or in the alternative, under 35 U.S.C. §103 as being unpatentable over Meister et al. (Pat. No. 6,200,609). He further rejected Claims 1-2, 4-7, and 10 under 35 U.S.C. §102 as being anticipated by, or in the alternative, under 35 U.S.C. §103 as being unpatentable over Bohren (Pat. No. 3,793,465). Lastly, Claims 1 and 4-6 were rejected under 35 U.S.C. §102 as being anticipated by, or in the alternative, under 35 U.S.C. §103 as being unpatentable over any of Kronberg (Pat. No. 2,127,524), Jameson et al. (Pat. No. 5,356,640), Nielson (Pat. No. 5,232,720), or Koslkowski et al. (Pat. No. 5,098,721). The Examiner did not indicate that the patents cited in the last rejection of Claims 1 and 4-6 were to be combined. Hence, Applicant understands the Examiner to have asserted that each of the four patents to individually make obvious the invention of Claims 1 and 4-6, as originally filed.

Claim 1 is directed to a method of "promoting protein absorption and utilization from the gastrointestinal tract of a subject" comprising the oral administration of a combination of milk protein concentrates and probiotic bacteria. Initially, Applicant respectfully points out that none of the references, whether considered individually or in combination, teach or suggest that ingesting a combination of milk protein concentrates and probiotic bacteria. Thus, for this reason, Claim 1 as originally filed is believed to be allowable. However, Claim 1 has

been amended to provide (1) that the amount of the combination or mixture that is administered to the subject is sufficient to increase the subject's total daily consumption of protein to approximately 1.5 grams to approximately 4.0 grams of protein per kilogram of body weight per day; (2) that the milk protein concentrate has a protein content of about 65% to about 90%; and that there is about 100,000 to about 50,000,000 probiotic bacteria organisms per gram of milk protein concentrate. None of the references, whether considered individually or in combination, teach or suggest any of these three elements, let alone the three elements in combination. Hence, Claim 1 as now presented is believed to be allowable. Claims 2-3 depend from Claim 1 and are similarly believed to be allowable.

Independent Claim 7 is directed to a method of promoting protein utilization and absorption in a subject. As in Claim 1, none of the cited references, whether considered individually or in combination, teach or suggest that a combination of milk protein concentrates and probiotic bacteria promotes protein utilization and absorption by a subject. However, Claim 7 has been amended, like Claim 1, to provide that the method includes administering "an amount of the combination sufficient to increase the to increase the subject's total daily consumption of protein to approximately 1.5 grams to approximately 4.0 grams of protein per kilogram of body weight per day." The prior art of record does not teach or suggest this additional element of Claim 7. Hence, Claim 7 is believed to be in condition for

allowance. Claim 8 depends from Claim 7 and is similarly believed to be in condition for allowance.

Independent Claim 10 has been amended similarly to Claim 7 and is also believed to be in condition for allowance.

Claim 11 is directed to a process or method for producing a probiotic protein concentrate. Part of the process includes "filtering skim milk fluid by passing the skim milk through a filtering membrane to separate out non-protein constituents of the skim milk". Meister et al. do disclose a process for producing a dehydrated food composition containing probiotic organisms. However, Meister et al. do not teach or suggest that part of the process includes filtering milk to remove non-protein constituents from the milk. In fact, Meister et al. do not appear to suggest that milk is altered in any way, other than concentrating the milk. That is, Meister et al. do not teach or suggest removing non-protein constituents from the milk. Thus, Meister et al. is not believed to anticipate or make obvious the subject matter of Claim 11. Claim 11 is therefore believed to be allowable over Meister. Claims 12-14 and 16 depend from Claim 11 and are similarly not believed to be anticipated or made obvious by Meister et al.

Claim 15, like Claim 11, is directed to a method for producing a probiotic protein concentrate. Claim 15 has been amended to provide that "non-protein constituents have been removed" have been removed from the milk protein concentrate and that the "skim milk protein concentrate compris[es] about 65% to

Appl. No. 10/045,803
Amdt. dated July 16, 2003
Reply to Office action of March 9, 2003

about 90% of the probiotic protein concentrate." As just noted above, Meister et al. do not disclose using a milk protein concentrate from which non-protein milk constituents have been removed. Nor does Meister et al. disclose that the skim milk protein concentrate comprises about 65% to about 90% of the probiotic protein concentrate. Hence, Claim 15 is not believed to be anticipated or made obvious by Meister et al.

Independent Claim 17 is directed to a probiotic milk protein concentrate. Claim 17 has been amended similarly to Claim 15 to provide that the milk protein concentrate used is one from which "non-protein constituents have been removed". As noted above, this is neither taught nor suggested by Meister et al. Hence, Claim 17 is believed to be allowable over Meister et al. Claim 18 depends from Claim 17 and is similarly believed to be allowable.

In view of the foregoing, Claims 1-3, 7, 8, 10-18 are believed to be in condition for allowance. A Notice of Allowability with respect to these claims is thus respectfully requested.

Respectfully Submitted,

Dated: 7/16/03



Paul M. Denk
Registration No. 22,598
763 South New Ballas Road
St. Louis, Missouri 63141
Tel: (314) 872-8136